



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: APRIL 24, 2023

IN THE MATTER OF:

Appeal Board No. 628415

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination that the claimant is not eligible for benefits effective April 11, 2022, to May 15, 2022, on the basis that the claimant did not comply with reporting requirements pursuant to Labor Law §596.4. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor. By decision filed February 08, 2023 (A.L.J. Case No. ), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the claimant contends that her telephone did not ring when she was called at the start of the adjourned hearing held on February 8, 2023. We have determined that the claimant had good cause for her failure to appear at that hearing and therefore should have another opportunity to be heard in this matter before the case is decided.

At the remand hearing, the claimant and the Commissioner of Labor shall be given an opportunity to cross-examine the testimony previously provided by each. To that end, Michael Hall should appear at the remand hearing on behalf of the Commissioner of Labor. The claimant should be asked at the remand hearing if she wishes to hear Mr. Hall's testimony or, in the alternative, to rely on the decision issued on February 8, 2023 in order to conduct

cross-examination of him. If the claimant elects to listen to Mr. Hall's prior testimony, it should be translated into Spanish before she begins cross-examination. If the claimant elects instead to rely on the decision issued on February 8, 2023, the Judge shall first ensure that the claimant has made a knowing waiver of her right to listen to Mr. Hall's testimony and the decision then should be translated into Spanish.

The Department of Labor Call History, marked as Exhibit 3 at the February 8, 2023 hearing, shall be translated into Spanish. The claimant then shall be given the opportunity to refute its contents and object to its entry into evidence.

The claimant is directed to produce her telephone records for the period of April 11, 2022, to May 15, 2022. The records should be sent to the Hearing Section prior to the remand hearing.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge is rescinded; and it is further

ORDERED, that the case is remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER